Appendix A

United States Court of Appeals
for the Ninth Circuit

Marion S. Felter, on behalf of himself and others similarly situated, Appellant, vs. Southern Pacific Company, a corporation; Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, Appellees.	No. 15,644 May 12, 1958

Appeal from the United States District Court for the Northern District of California, Southern Division

Before: Healy, Fee, and Barnes, Circuit Judges

Healy, Circuit Judge

The Railway Labor Act, 45 USCA §152, grants the right of collective bargaining, the right of employees freely to join a recognized union, etc. Subsection "Eleventh (b)" of §152, relevant here, provides, among other things, that any carrier and a labor or-

ganization shall be permitted "to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments . . . uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner."

Appellees Southern Pacific Company and the Brotherhood of Railroad Trainmen entered into a dues check off agreement such as is contemplated by the above provision. As part of this agreement it was stipulated that "Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization [union] without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employees and for the delivery of such forms to the Company." The agreement contained provisions to the effect that deductions be made by the Company in accordance with lists of employees forwarded by the Union. It was further provided that thereafter two lists be furnished each month by the Union, one showing addi-

tional employees and one showing changes in amounts and the names of any employees for whom no further deductions should be made. The list was to "be accompanied by revocation of assignment forms signed by each employee so listed."

Appellant was employed as a conductor for Southern Pacific. He executed an assignment form provided by appellee Brotherhood, of which union he was then a member, and thereafter his union dues were regularly deducted. After the passage of more than a year he joined another union, the Order of Railway Conductors and Brakemen. [There was no impropriety in his joining this union inasmuch as the Railway Labor Act protects the employee's right to change unions if he desires to do so.] Appellant then obtained, filled out and signed a form to terminate his assignment of wages, this form being printed and furnished by his new union. In all material respects it was identical with the form as printed by his former union. The revocation form was sent to the Railroad Company, and the Company forwarded it to the Brotherhood. Appellee Brotherhood immediately wrote appellant, sending him a form provided by it and requesting that he fill it out and return it so that his assignment could be revoked by the list the union was then preparing for submission to the Railroad Company under the terms of the agreement.

Appellant never returned the proffered form to the Brotherhood. Accordingly, the Railroad Company did not terminate appellant's dues assignment and has continued to deduct dues for the Brotherhood, his former union.

There appears to be no dispute as regards the facts; and the only issue raised by appellant is whether the agreement, as interpreted by the appellees, to require a revocation to be on a form furnished by the union from which he had withdrawn, is violative of the Railway Labor Act. His argument is that the Act says a wage assignment "shall be revocable in writing" and that by requiring this writing to be on a particular form is a requirement which goes beyond what is permitted by the Act.

The trial judge was of opinion that the Act should be given a workable interpretation; that the requirement of special forms was merely to facilitate orderly procedure and to aid effective bookkeeping; and that this should be allowed if it does not place an unreasonable burden on the employee's right to change unions.[1] He concluded that it did not, more especially in this case where the appellee union had the forms, was ready and able to furnish them, and in fact did send the correct forms to appellant, who for reasons best known to himself did not see fit to use them.

We are of opinion that the trial court's appraisal of the case is correct, and the judgment is accordingly affirmed.

(Endorsed:) Opinion. Filed May 12, 1958.
Paul P. O'Brien, Clerk.

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[1]See opinion of the Supreme Court in Pennsylvania Railroad Co. v. Rychlik, 352 U. S. 480. The case is not in point here except that it discusses the purposes of the Act. The Court concluded that the Act is intended to facilitate changes in unions, not to aid one union to raid another, but to cope with the problem peculiar to the railroad industry where employees may temporarily shift from craft to craft.

In the United States District Court
Northern District of California
Southern Division

No. 36,348

Marion S. Felter, on behalf of himself and others similarly situated,
Plaintiff,
vs.
Southern Pacific Company, a corporation; Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, etc.,
Defendants.

ORDER

The cross motions for summary judgment which are before this court involve an interpretation of Section 2, Eleventh of the Railway Labor Act, 45 U.S.C. 152, Eleventh. The pertinent parts of this section read:

* * * any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that * * * all employees

shall become members of the labor organization representing their craft or class: * * *

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied * * * if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; * * * Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from an organization to another organization admitting to membership employees of a craft or class in any of said services.

Pursuant to the permission granted by the Act, defendants Southern Pacific Company and Brotherhood of Railroad Trainmen entered into a dues deduction agreement. The agreement provided that employee members of the Brotherhood could authorize deductions from their wages, or revoke such authorization, by completing prescribed forms to be reproduced and furnished by the Brotherhood. The Brotherhood was to notify the Company of these wage assignments and revocations of wage assignments by forwarding the completed forms, together with deduction lists, by the fifth day of each month. The assignments and revocations thus forwarded would be effective as of the first day of that month.

Plaintiff is employed as a conductor by the Southern Pacific Company. On or before February 1, 1956, plaintiff executed a wage assignment in accordance with the above agreement. After this assignment had been in effect for over a year, he decided to change his membership to the Order of Railway Conductors and Brakemen,[1] and he so notified the Brotherhood in a letter dated March 30, 1957 and received by the Brotherhood on April 2nd. At the same time, wage assignment revocation cards were furnished by the ORCB, completed by plaintiff and forwarded by the ORCB to the Brotherhood and the Company. These cards followed the form prescribed by the dues deduction agreement and in all material respects were identical with the cards furnished by the Brotherhood. The card sent to the Company was forwarded

[1]Formerly the Order of Railroad Conductors.

by the Company to the Brotherhood in a letter dated April 1, 1957, while the card which came directly from the ORCB was received by the Brotherhood on March 30th.

The Brotherhood replied to plaintiff's letter in a letter dated April 2nd, stating that the cards furnished by the ORCB were not acceptable because the dues deduction agreement provided that wage assignment revocation cards were to be reproduced and furnished by the Brotherhood. The letter went on to state that one of the Brotherhood's cards was enclosed and that as the wage assignment papers for April were to be forwarded to the Company the next morning, the new card would not be effective until May 1st.

Plaintiff did not complete the new card furnished by the Brotherhood; the Brotherhood did not forward plaintiff's name to the Company as one whose wage assignment was to be revoked; and the Company therefore continued to regard plaintiff's wage assignment as in full effect. This action was brought on behalf of plaintiff "and others similarly situated,"[2] seeking, together with appropriate injunctive relief, a determination that the action of the Brotherhood and the Southern Pacific Company in refusing to accept plaintiff's attempted revocation of wage assignment is a violation of plaintiff's rights under the Railway Labor Act.

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[2]There is some dispute as to whether there are in fact others similarly situated, but this question does not affect the outcome of the case.

Neither side presses this court for an interpretation of the dues deduction agreement. The sole question is whether the agreement as interpreted by the defendants is violative of the Railway Labor Act.

Although the proviso in Section 2, Eleventh (c) protecting the employee's right to change unions is in terms wholly unrestricted, it must be given a workable interpretation. A change in unions, and thus a change in dues deductions, obviously involves many bookkeeping and records changes on the railroad's part. It follows from this that employees cannot willy-nilly skip from one union to another, that some sort of orderly procedure has to be established. The dues deduction agreement between the Brotherhood and the Company sought to establish just such an orderly procedure. The only question is whether the procedure established by this agreement places such an unreasonable burden on employees who wish to withdraw from the Brotherhood that it operates as a violation of an employee's right under the Act to change unions.

The part of the withdrawal procedure which is complained of is the requirement that a revocation card must be secured from the Brotherhood. While this requirement may seem a bit arbitrary, it certainly is no burden. It is easily complied with, and is not appreciably more difficult than securing a revocation card from some other source. The only burden here would seem to be on the rival union, which perhaps cannot as easily recruit new members; and this

is not determinative of the issue. Pennsylvania Railroad Company et al. v. Rychlik, 352 U.S. 480 (1957).

Accordingly, this court holds that the dues deduction agreement as interpreted by the defendants is a reasonable compliance with the Railway Labor Act and not violative of plaintiff's rights under the Act. It is ordered that the temporary restraining order heretofore issued on April 12, 1957 be dissolved and that the action be dismissed.

Dated: May 24th, 1957.

/s/ Edward P. Murphy,
United States District Judge.

[Endorsed]: Filed May 24, 1957.

United States Court of Appeals
for the Ninth Circuit

No. 15,644

Marion S. Felter, etc.,
Appellant,

vs.

Southern Pacific Company, a corporation, et al.,
Appellees.

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed) Filed and entered: May 12, 1958

Paul P. O'Brien, Clerk

Appendix B

Sections 2, Fourth and Eleventh of the Railway Labor Act, as amended, 45 U.S.C. §152 (Fourth and Eleventh).

"FOURTH. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: PROVIDED, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours with-

out loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization."

"ELEVENTH. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: PROVIDED, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment

to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: PROVIDED, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employees in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: PROVIDED, HOWEVER, That as to an employee in any

of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: PROVIDED, FURTHER, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

"(d) Any provision in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended."